STATE OF MICHIGAN

COURT OF APPEALS

DETROIT EDISON COMPANY,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, ENERGY MICHIGAN, INC., NATIONAL ENERGY MARKETERS ASSOCIATION, ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY, and ATTORNEY GENERAL,

Appellees.

UNPUBLISHED
September 13, 2005

No. 253317
PSC
LC No. 00-013350

Before: Cooper, P.J. and Bandstra and Kelly, J.J.

PER CURIAM.

Detroit Edison Company appeals as of right the Public Service Commission's order and opinion that Edison had no net stranded costs for 2000 and 2001. We affirm.

The scope of appellate review of PSC orders is narrow. *In re MCI Telecommunications Complaint*, 255 Mich App 361, 365; 661 NW2d 611 (2003). Pursuant to MCL 462.25, all rates, fares, charges, practices, and services prescribed by the PSC are deemed prima facie to be lawful and reasonable. *Id*. Under MCL 462.26(8), a party challenging an order of the PSC has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. *Id*. "A decision of the PSC is unlawful when it involves an erroneous interpretation or application of the law and it is unreasonable when it is unsupported by the evidence."

Edison first argues that the PSC denied it a full recovery of its net stranded costs for 2000 and 2001 under MCL 460.10a(1), which reads:

> No later than January 1, 2002, the commission shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission.

Edison analogizes this case to *Detroit Edison Co v Pub Service Comm No 2*, 261 Mich App 448; 683 NW2d 679 (2004) and *Consumers Energy Co v Pub Service Comm No 2*, 261 Mich App 455; 683 NW2d 188 (2004). In each of those cases, the PSC conditionally approved an electric utility's implementation costs under MCL 460.10a(1), but indefinitely deferred the recovery of those costs. *Detroit Edison, supra* at 450-452; *Consumers Energy, supra* at 457-460. This Court determined that, in enacting MCL 460.10a(1), the Legislature did not intend to allow indefinite deferral of the recovery of implementation costs. *Detroit Edison, supra* at 452-453; *Consumers Energy, supra* at 459-460. In contrast, the PSC in this case found that Edison had no net stranded costs for 2000 and 2001. Accordingly, the *Detroit Edison* and *Consumers Energy* decisions are inapposite.

Edison also argues that MCL 460.10a(16),[1] which mandates annual reconciliation proceedings after a contested case hearing, requires that an electric utility recover net stranded costs on an ongoing basis. However, as discussed above, the PSC found that Edison did not have any net stranded costs for 2000 and 2001. There is no issue as to whether they should be recovered on an ongoing basis.

Edison also contends that the PSC failed to implement a clear "methodology" for its determination of no net stranded costs. But Edison does not cite, and this Court has not found, any statutory requirement for the PSC to establish a comprehensive methodology for such determinations. Rather, MCL 460.10a(1) imposes an obligation on the PSC to provide "for full recovery of a utility's net stranded costs and implementation costs *as determined by the commission*" (emphasis added). Further, MCL 460.10a(17)[2] clearly gives the PSC broad discretion in determining the method to be used in determining net stranded costs:

> The commission shall consider the reasonableness and appropriateness of various methods to determine net stranded costs, including, but not limited to, all of the following:
>
> (a) Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.
>
> (b) Evaluating net stranded costs based on the market price of power in relation to prices assumed by the commission in prior orders.
>
> *(c) Any other method the commission considers appropriate*. [Emphasis added.]

We have reviewed the method employed by the MPSC and do not find that it falls short of the requirements of the statute, which grants the MPSC wide discretion in this regard. Accordingly, Edison's argument is without merit.

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[1] Edison refers to MCL 460.10a(16) by its prior codification as MCL 460.10a(9).

[2] At the time relevant to the PSC proceedings in this case, this provision was codified as MCL 460.10a(10).

Edison also contends that the PSC failed to allow it to recover its projected costs for 2003. But Edison is not entitled to relief based on this argument because of its failure to appropriately argue its merits. See *Badiee v Brighton Area Schools*, 265 Mich App 343, 378-379; 695 NW2d 521 (2005).

Edison also contends that the PSC violated MCL 460.10(2)(e). MCL 460.10(2) enumerates the purposes of the Customer Choice and Electricity Reliability Act, i.e., MCL 460.10a to MCL 460.10bb. MCL 460.10(2)(e) sets forth the following purposes: "To improve the opportunities for economic development in this state and to promote financially healthy and competitive utilities in this state." MCL 460.10(2) does not actually define any powers or duties of the PSC, rather, it provides some general guidance for interpretation of the substantive provisions of the relevant act. Edison has not established that the PSC violated MCL 460.10(2)(e).

In Edison's only specific attack on the PSC's factual findings, Edison argues that the PSC improperly imputed revenues to Edison for purposes of calculating its net stranded costs in relation to Edison's sale of electricity at reduced rates to the "Big Three" automakers. It is undisputed that Edison sold electricity to these automakers at a rate lower than the rate it would normally charge such industrial customers under special contracts and that the PSC authorized Edison to enter into these contracts in an order entered on March 23, 1995 in Case No. U-10646. Edison does not argue that the PSC failed to present a meaningful cost analysis. Rather, Edison argues that it was an error of law for the PSC to impute "fictitious" revenue that was never actually received by Edison in connection with the special contracts for purposes of determining Edison's net stranded costs. However, Edison has not cited any authority indicating that imputing revenue under these circumstances is inappropriate. As set forth above, MCL 460.10a(17)(c) authorizes the PSC to use any method it considers appropriate in determining net stranded costs. Therefore, we conclude that it was not unlawful for the PSC to impute additional revenue in calculating Edison's net stranded costs for 2000 and 2001 based on the reduced rate sales under the special contracts at issue.

Edison further argues that the PSC's imputation of revenue in connection with the special contracts has impaired those contracts in violation of MCL 460.10aa. This argument is without merit. The PSC's order did not affect the contractual rights or obligations of Edison or the Big Three automakers. Rather, the PSC simply determined how Edison's revenues from the special contracts should be treated in calculating Edison's net stranded costs for 2000 and 2001.

Edison also asserts that the PSC's treatment of the special contracts constituted an unconstitutional taking of its property. However, Edison has waived this argument by providing inadequate briefing on appeal. Also, Edison has not shown any basis for such a claim because it has not established that the PSC's treatment of the special contracts in the present context has resulted in Edison not being fairly compensated for the electric-related services it provides. See *Detroit Edison Co v Pub Service Comm*, 264 Mich App 462, 473; 691 NW2d 61 (2004).

Finally, Edison also argues that the PSC improperly continued a securitization offset and rate reduction equalization credits for retail open access (ROA) customers, i.e., customers who receive electric distribution service from Edison but pay an alternative electric supplier for electric generation service. We decline to reach the merits of this argument because we conclude that this issue is moot. The practice challenged by Edison has ended and there is no appropriate

remedy for Edison based on any past impropriety in this regard, *Eller v Metro Industrial Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004), and, further, we do not believe that "it is likely to recur yet evade judicial review." *Costa v Community Emergency Med Services, Inc*, 263 Mich App 572, 581; 689 NW2d 712 (2004).

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly